

1 Hon. Marsha J. Pechman
2 Plaintiffs' Motion No. 51
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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE

13 MARY BECK, et al.,

14 Plaintiffs,

v.

15 THE BOEING COMPANY,

16 Defendant.

No. C00-0301P

PLAINTIFFS' MOTION FOR
APPROVAL OF DISTRIBUTION OF
SETTLEMENT FUNDS TO THE
CLASS

NOTED FOR: November 25, 2005

17 **I. INTRODUCTION**

18 Pursuant to section IV.B.2.f of the Consent Decree entered by this Court on
19 October 8, 2004, Class Counsel submit this report to the Court describing the claims
20 process and move for the Court to approve distribution of the settlement funds in
21 accordance with the distribution described herein. The undersigned counsel for Boeing
22 confirm the accuracy of the positions ascribed to Boeing in this report.

23 **II. REPORT ON THE CLAIMS PROCESS**

24 Pursuant to section IV.B.2.a of the Consent Decree, claim forms were sent by first
25 class mail, postage prepaid, to all class members, at their last known address, on January
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PLAINTIFFS' MOTION FOR APPROVAL OF
DISTRIBUTION OF SETTLEMENT FUNDS TO
THE CLASS
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1 3, 2005. Prior to sending out the claim forms, a postcard had been sent informing the
 2 class members of the order granting final approval to the settlement, and seeking address
 3 confirmation. For all postcards which were returned as undeliverable, the Settlement
 4 Administrator searched, based upon social security numbers provided by Boeing, for any
 5 alternate addresses for class members and mailed the claim forms to alternate addresses
 6 for those class members. Finally, notice about the suit and a sample claim form were
 7 posted on the website www.beckvboeing.com. Based upon the efforts undertaken by the
 8 Settlement Administrator to locate current addresses, and the actual response rate by class
 9 members, the Settlement Administrator met its obligation to use “best efforts” to deliver
 10 the claim form to all class member, consistent with Section IV.B.2.a of the Consent
 11 Decree.

12 A total of 20,338 claim forms were received by the Settlement Administrator, and
 13 a full report on all claim forms was provided to Boeing. Following a review of the claim
 14 forms by counsel for Boeing, 2378 claim forms were contested by Boeing. Class Counsel
 15 does not dispute the disqualification of those claim forms where the claim form (a) was
 16 postmarked after May 3, 2005, the deadline for mailing in a claim form pursuant to the
 17 Consent Decree IV.B.1.a.i and B.2.b; (b) was submitted by someone who did not actually
 18 qualify as a class member;¹ (c) was submitted by a class member who had filed a valid
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21 ¹ This included those who did not work in the Puget Sound area during the class
 22 period, women who had been terminated by Boeing prior to the class period, engineering
 23 employees who were not covered by the settlement, or people who worked for Boeing
 24 only through a temporary agency or other contractor, and not as a Boeing employee. See
 25 generally Consent Decree at III.A.10. It also included one person who is a pre-operative
 26 transsexual who as of yet has not undergone gender reassignment surgery and is recorded
 in Boeing’s database as a male. Finally, class representatives who received individual
 awards pursuant to the Consent Decree were not eligible to participate in the distribution
 of funds to class members, and their claim forms were also excluded.

1 form opting out of the class, and had not asked to withdraw that opt-out form;² and (d) did
 2 not comply with section IV.B.1.a.ii of the Consent Decree because it did not state either
 3 that the class member believed she may have been paid unfairly because of her gender or
 4 that she had received less overtime because of her gender.³ There were, however, eleven
 5 individuals that Boeing could or did initially challenge, who the parties ultimately agreed
 6 to include in the class. They are discussed below at pages 4-5.

8 Subject to the Court's approval of the positions described herein regarding certain
 9 claimants, there were 5,584 valid claim forms from hourly class members, which
 10 constitutes 59.4% of the total hourly class, and 12,776 valid claim forms from salaried
 11 class members, which constitutes 65.5% of the salaried class.⁴ Thus, the parties agree that
 12 pursuant to section IV.A.1 of the Consent Decree, Boeing should allocate to the Salaried
 13 Class Fund \$56.4 million and to the Hourly Class Fund \$16.1 million, for a Total Fund of
 14 \$72.5 million, including attorneys' fees and costs.

16 III. PROPOSED DISTRIBUTION

17 A. Resolution of Issues that Arose in the Claims Process

18 There were some issues that arose during the claims administration process which
 19 were not explicitly addressed by the Consent Decree. The parties have no dispute about
 20 how to address these issues, and request that the Court, in approving the distribution to the

21 ² This group is discussed in further detail below at page 5.

22 ³ This includes those who checked "no," those who answered "I don't know" and
 23 those who provided no answer at all. Further, if the woman asserted a claim only as to
 24 overtime, but had worked only as a salaried employee on whose behalf no overtime claims
 25 were pursued, or if the woman asserted a claim only as to salary, but had worked during
 the class period only as an hourly employee on whose behalf no equal salary claims were
 pursued, then they were also excluded.

26 ⁴ There were also over 80 claim forms from interns. Some people are counted in
 both the hourly and the salaried class, and thus the total number of unique individuals with
 valid claims is somewhat less than the total of the hourly class and the salaried class.

1 class, approve the joint position of the parties with respect to the following issues.

2 1. Claim Forms That Were Not Postmarked

3 There were many claim forms on which no postmark date was discernable. The
 4 parties agreed to follow the practice used by the Settlement Administrator in most other
 5 cases, in which all claim forms for which no date was discernable but which arrived on or
 6 before the last date on which a clearly timely postmarked claim form arrived, would be
 7 treated as timely. All claim forms for which no date was discernable which arrived later
 8 than the latest date on which a timely postmarked claim form arrived, were treated as
 9 untimely. Class Counsel requests that the Court approve application of this general rule to
 10 the settlement administration here.

11 2. Class Members Who Did Not Receive A Claim Form Until After
 12 Deadline

13 There were six class members who, due to changes in name and/or address, or for
 14 some other reason, aver that they did not receive a copy of the claim form until after the
 15 May 3, 2005 deadline for submission of executed claim forms, despite the Settlement
 16 Administrator's best efforts to locate current addresses. Each class member who made
 17 contact with class counsel subsequent to May 3, 2005 and asked for a claim form was
 18 provided with a claim form and asked to explain the reasons why a timely claim form was
 19 not submitted. This information was provided to Boeing, and Boeing has indicated that it
 20 does not object to these six women participating in the settlement distribution as if they
 21 had submitted their claim forms on time. A declaration from each woman explaining her
 22 circumstances is filed herewith under seal. *See Exhibit A.* Based on the explanations of
 23 these six women as set forth in their declarations, their diligence in contacting class
 24 counsel or the Settlement Administrator, and the fact that their claims were received
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1 before the award distribution was calculated, Class Counsel requests that the Court
 2 approve their inclusion in the settlement distribution.

3 3. Class Members With Other Reasons for a Late Submission

4 There are three additional class members who provided explanations for why their
 5 claim forms arrived late and as to whom Boeing has no objection to their participation in
 6 the settlement. Two state or aver that they submitted timely claim forms, but the forms
 7 were not received, that they contacted the Settlement Administrator to confirm receipt,
 8 and when they learned that their claim forms were not on file, submitted a new form.
 9 Finally, a third class member avers that she misplaced her claim form, and submitted it
 10 very shortly after the deadline. Declarations or written statements from all three women
 11 are filed under seal as Exhibit B. Based on the explanations of these three women as set
 12 forth in their attached statements, their diligence in contacting the Settlement
 13 Administrator, and the fact that their claims were received before the award distribution
 14 was calculated, Class Counsel requests that the Court approve their inclusion in the
 15 settlement distribution.

16 4. Class Members Who Filed Opt-out Forms Prior to Settlement and
 17 Requested to Withdraw Opt-out and Participate in Class During
 18 Claims Phase

19 Two women who had submitted opt-out forms in response to the first notice issued
 20 following certification of the class in this case submitted timely claim forms stating that
 21 they had changed their minds and did not want to opt-out of the class. Boeing has no
 22 objection to these two women being permitted to participate in the settlement.
 23 (Statements from these women are filed under seal as Exhibit C hereto). Class Counsel
 24 accordingly requests that the Court approve the addition of these two women.

1 5. Class Members Who Are Deceased

2 Pursuant to section IV.B.1.b of the Consent Decree, claim forms on behalf of
 3 deceased class members were accepted when filed by an authorized representative of the
 4 Estate and accompanied by a certified copy of the death certificate. The parties agreed
 5 that claim forms from estates of decedents which did not provide answers to the questions
 6 in the claim forms would be treated in the same manner as claim forms from living class
 7 members were treated, and would be excluded from participation in the settlement if the
 8 questions in the claim forms were not answered in the affirmative. There were five claim
 9 forms returned by the representatives of the deceased that were not completed in
 10 accordance with the prerequisites of the Consent Decree and these do not qualify to
 11 participate in the settlement. Class Counsel requests that the Court approve the
 12 disqualification of these claim forms.

14 6. Class Members in Bankruptcy or Subject to Garnishment

15 The Settlement Administrator, class counsel, and Boeing have received notice
 16 from Bankruptcy Trustees or state agencies with garnishment orders with respect to
 17 several class members, stating that any sum payable to the class member should instead be
 18 paid to the Estate in Bankruptcy or pursuant to a garnishment order. Of these individuals,
 19 four submitted claim forms that did not qualify for participation in the settlement. As to
 20 the remaining class members, Class Counsel seeks the Court's approval to comply with
 21 the garnishment orders or direction of the Bankruptcy Trustees with respect to payment of
 22 the sums otherwise due to the class members. A list of the affected class members and the
 23 bankruptcy trustee or garnishor is filed under seal as Ex. D hereto. Class Counsel have
 24 sent notice to these class members of the notice we have received concerning payment of
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1 their share of the settlement funds. Class counsel have further sent letters to these class
 2 members telling them that this matter would be put before this Court on November 25,
 3 2005, so that if they had any reason to dispute the accuracy of the information provided by
 4 the bankruptcy trustees or garnishor, they would have the opportunity to bring such an
 5 issue to the Court's attention. In the absence of any objection from those class members,
 6 Class Counsel requests that the Court approve payment of funds due these class members
 7 pursuant to the settlement to the Estate in Bankruptcy or as directed by the order of
 8 garnishment.

10 B. Distribution to the Class

11 The specific amount payable to each class members has been calculated by Boeing
 12 in accordance with section IV.B of the Consent Decree. A schedule identifying the gross
 13 amount payable to each of the 17,960 participating class members⁵ is attached hereto as
 14 Ex. E and has been filed under seal.⁶

16 Boeing provided the calculation of individual class member awards to class
 17 counsel on October 21, 2005. Pursuant to section IV.B.2.f, this report is being submitted
 18 to the Court on November 10, 2005, less than 30 days following receipt of the calculation
 19 from Boeing. The same section provides that Boeing shall deliver to the Settlement
 20 Administrator checks made out to each class member in the amounts set forth in Ex. E,
 21 less applicable withholding of taxes pursuant to section IV.D.2 of the Consent Decree, by

23 ⁵ One eligible claimant who had submitted a timely claim form contacted class
 24 counsel and asked to be excluded from the distribution of funds. Class Counsel confirmed
 25 in writing that she wished to waive her right to receive a portion of the settlement, and the
 calculation of the awards to class members was done without including her.

26 ⁶ The amounts set forth on the attached Exhibit E do not include the awards
 already paid to the named plaintiffs and to 22 class members as set forth in section IV.C.4
 of the Consent Decree and approved by this Court in its October 8, 2004 Order.

1 January 14, 2006. Plaintiffs request that the Court issue an order approving the
 2 distribution in advance of that date so that checks can be mailed to class members as soon
 3 as possible after receipt of the checks from Boeing.

4 C. Other Payments Pursuant to the Consent Decree

5 Pursuant to the Consent Decree, the Class Representative awards, service awards
 6 to 22 class witnesses, and payment of attorneys' fees and expenses will be deducted from
 7 the \$72.5 million Total Fund before money is distributed to class members. Consent
 8 Decree, section IV.A.2. The amounts due to Class Representatives and the service awards
 9 to 22 of the class members have already been paid, as has the minimum amount of
 10 attorneys' fees awardable pursuant to the Consent Decree. section VIII. *See Order,*
 11 October 8, 2004 (awarding a preliminary payment of \$9.4 million in attorneys' fees).
 12 Pursuant to section VIII.A, Class Counsel seeks payment of an additional \$5.6 million in
 13 attorneys' fees from the Total Fund, bringing the total fees paid to \$15 million, consistent
 14 with this Court's Order Granting Final Approval.

15 Finally, following distribution of the funds described above to both class members
 16 and class counsel, the parties will make a further submission to the Court with respect to
 17 the interest payment. Over \$1 million in interest should be imputed to the Total Fund as
 18 of December, 2005. Consent Decree section IV.A.3. Pursuant to the Consent Decree, that
 19 interest will be available to pay for, among other things, class counsel's litigation
 20 expenses which exceeded the \$3 million originally awarded for such expenses, for the
 21 expenses associated with the claims administration process, and for attorneys fees
 22 incurred for, among other services, implementing the settlement and monitoring Boeing's
 23 compliance with the decree. Section IV.A.3.

1 DATED this 10th day of November, 2005.
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3 Respectfully submitted,

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12 Confirmed as to the positions of The Boeing Company described herein:

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